

C. The Commission's De Facto Freeze

The final deficiency in the ET Docket 92-9 NPRM that the present petition seeks to redress is the Commission's treatment of applications for new and modified 2 GHz microwave facilities pending the outcome of the NPRM. The Commission announced in the NPRM that, effective with the adoption date of the NPRM, applications for new facilities in the 2 GHz band will be "granted on a secondary basis only, conditioned upon the outcome of [ET Docket No. 92-9]." As UTC pointed out in its March 31, petition, this announcement has been the source of wide-spread confusion among existing 2 GHz microwave users, manufacturers and coordinating bodies. Although the full scope of this secondary-only policy is still uncertain, the Commission made clear that this policy applies to all categories of private microwave users, including state and local government agencies.^{18/} In view of the critical functions supported by their private microwave systems, utilities are unwilling to operate microwave systems on a "secondary-only" basis. Therefore, the practical effect of the Commission's 2 GHz licensing policy has been to foreclose

^{18/} See NPRM in ET Docket No. 92-9, at para. 25: "Consistent with our overall objective in this matter, applications submitted after the adoption date of this Notice for new 2 GHz facilities by state and local government agencies will be authorized on a secondary basis only, conditioned upon the outcome of this proceeding."

licensing of new 2 GHz microwave systems as well as the expansion or modification of existing 2 GHz microwave systems.^{19/}

In the April 20, 1992, letter to Senator Hollings, the Commissioners indicated that they "will allow modifications to existing systems by public safety as well as other incumbent licensees." While the Commission apparently is planning to allow existing 2 GHz users to modify existing facilities and retain their co-primary status, UTC believes that a formal clarification of this decision by the Commission is necessary in order to alert existing 2 GHz microwave licensees as to what exactly their rights are concerning expansions and modifications of existing facilities. Therefore, UTC requests that a clarification of this policy be included in either an erratum to the NPRM or in a further notice of proposed rulemaking.

IV. Conclusion

The Commission's NPRM in ET Docket 92-9 has a number of procedural and substantive deficiencies that must be remedied prior to any satisfactory and fair resolution of the proceeding. The most appropriate and efficient method to redress the defects

^{19/} Among UTC's members are state- and municipally-owned electric, gas and water utilities which are equally precluded from modifying or expanding existing systems, and from installing new 2 GHz microwave systems, despite the Commission's proposal to afford indefinite co-primary status for these entities' existing 2 GHz microwave systems.


in the NPRM is to issue a further notice of proposed rulemaking that invites comment on the choice of band to be used for the spectrum reserve; specifically, the 2.50-2.69 GHz and the 1.99-2.11 GHz bands should be considered as alternatives to 2 GHz private and common carrier microwave bands. The FCC should also propose specific technical and operational rules concerning the securing and use of replacement spectrum by displaced users of the band ultimately selected as the spectrum reserve. Finally, the Commission should clarify its policy regarding the licensing status of expansions and/or modifications to existing facilities pending the outcome of ET Docket No. 92-9.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council respectfully requests the Commission to initiate a further notice of proposed rulemaking consistent with the views expressed herein.

Respectfully submitted,


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CERTIFICATE OF SERVICE

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